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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CARL SAPUTO JR., VALERIE
TORRES, and JOYCETTE GOODWIN
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

JOHNSON & JOHNSON and
KENVUE INC.,

Defendants.

Case No. '24CV1117 JLS KSC

**PLAINTIFFS' CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs Carl Saputo Jr., Valerie Torres, and Joycette Goodwin (together,
 2 “Plaintiffs”) bring this Class Action Complaint against Defendants Johnson &
 3 Johnson (“J&J”) and Kenvue Inc. (“Kenvue”) (together, “Defendants”), individually
 4 and on behalf of all others similarly situated, and complain and allege upon personal
 5 knowledge as to themselves and their own acts and experiences and, as to all other
 6 matters, upon information and belief, including investigation conducted by their
 7 attorneys:

8 NATURE OF THE ACTION

9
 10 1. Plaintiffs bring this important consumer class action lawsuit on behalf
 11 of similarly situated consumers (“Class Members”) who purchased for personal,
 12 family, or household use, Defendants’ Band-Aid products, including Band-Aid
 13 Flexible Fabric Bandages, Band-Aid OURTONE Flexible Fabric BR45 Bandages;
 14 Band-Aid OURTONE Flexible Fabric BR55 Bandages; and Band-Aid OURTONE
 15 Flexible Fabric BR65 Bandages (“Products”).

16 2. Defendants formulate, manufacture, market, and sell the Products,
 17 which they uniformly represent and advertise as, *inter alia*, being the “#1 Doctor
 18 Recommended Brand” of bandages.”¹

19 3. Defendants fail to disclose to consumers that the Products contain per-
 20 and polyfluoralkyl substances (“PFAS”).

21 4. PFAS are a group of synthetic, man-made, chemicals known to be
 22 harmful to both humans and the environment. Because PFAS persist and accumulate
 23 over time, they are harmful even at very low levels. Indeed, “PFAS have been shown
 24 to have a number of toxicological effects in laboratory studies and have been
 25
 26
 27

28 ¹ <https://www.band-aid.com/products/adhesive-bandages/flexible-fabric-bandages>.

1 associated with thyroid disorders, immunotoxicity effects, and various cancers in
2 epidemiology studies.”²

3 5. In fact, scientists are studying—and are extremely concerned about—
4 how PFAS affect human health. Consequently, the CDC outlined “a host of health
5 effects associated with PFAS exposure, including cancer, liver damage, decreased
6 fertility, and increased risk of asthma and thyroid disease.”³

7 6. Defendants know the importance of marketing and labeling, including
8 the value of the label representations they carefully choose for placement on the
9 Products. Insofar as *PFAS* made its way into Defendants’ Products on purpose, it
10 should have been listed on the Product’s labeling. Insofar as it made its way into the
11 Products by accident, it follows that it was due to poor manufacturing processes by
12 either Defendants and/or their agents.

13 7. Defendants fail to mention the presence of PFAS in the Products on the
14 label, and further consistently and pervasively market the Products as the “#1 Doctor
15 Recommended [bandage] Brand,” thus implying the Products are safe and fit for
16 their intended use.

17 8. Indeed, the Products actually contain PFAS—a category of man-made
18 chemicals with a toxic, persistent, and bioaccumulative nature which are associated
19 with numerous health concerns.

20 9. As a result of Defendants’ misrepresentations and omissions, Plaintiffs
21 and putative Class Members have suffered injury in fact, including economic
22 damages.

23 10. Accordingly, Plaintiffs bring their claims against Defendants
24 individually and on behalf of a Class of all others similarly situated for (1) violation

25 ² Nicholas J. Heckert, et al. “Characterization of Per- and Polyfluorinated Alkyl
26 Substances Present in Commercial Anti-fog Products and Their In Vitro
Adipogenic Activity,” *Environ. Sci. Technol.* 2022, 56, 1162-1173, 1162.

27 ³ Harvard T.H. Chan Sch. Of Pub. Health, Health Risks of widely used chemicals
28 may be underestimated (June 27, 2018), <https://www.hsph.harvard.edu/news/hsph-in-the-news/pfas-healthrisks-underestimated/>.

1 of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*
 2 ("UCL"); (2) violation of California's False Advertising Law, Cal. Bus. & Prof.
 3 Code § 17500, *et seq.* ("FAL"); (3) breach of implied warranty under the Song-
 4 Beverly Act, Cal. Civ. Code § 1700, *et seq.* and Cal. Com. Code § 2314; (4) breach
 5 of express warranty; (5) negligent misrepresentation; and (6) unjust enrichment.

6 **PARTIES**

7 **A. Plaintiffs**

8 11. Plaintiff Saputo is a resident of Barstow, California, and was, at all
 9 times relevant hereto, a citizen of California.

10 12. Plaintiff Torres is a resident of Los Angeles, California, and was, at all
 11 times relevant hereto, a citizen of California.

12 13. Plaintiff Goodwin is a resident of Gardena, California, and was, at all
 13 times relevant hereto, a citizen of California.

14 **B. Defendants**

15 14. J&J is a New Jersey corporation with its principal place of business
 16 located in New Brunswick, New Jersey.

17 15. Kenvue is a Delaware corporation with its principal place of business
 18 located in Skillman, New Jersey.

19 **JURISDICTION AND VENUE**

20 16. This Court has subject matter jurisdiction over this matter pursuant to
 21 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (1) there are
 22 100 or more proposed Class Members, (ii) the aggregate amount in controversy
 23 exceeds \$5,000,000.00, exclusive of interest and costs, and (iii) there is minimal
 24 diversity because Plaintiffs and Defendants are citizens of different states.

25 17. This Court has personal jurisdiction over the Defendants because they
 26 transact business in this state and district, have substantial aggregate contacts with
 27 this state and district, engaged in conduct that has and had a direct, substantial,
 28

1 reasonably foreseeable, and intended effect of causing injury to persons in this state
 2 and district, and because they purposefully availed themselves of the laws of the
 3 state of California, and further, because Plaintiffs purchased the Products in this state
 4 and district.

5 18. In accordance with 28 U.S.C. § 1391, venue is proper in this district
 6 because a substantial part of the conduct giving rise to Plaintiffs' claims occurred in
 7 this district, including Plaintiffs' purchase of the Products, because Defendants
 8 transact substantial business in this district, and because Defendants have
 9 intentionally availed themselves of the laws and markets within this district.

10 **FACTUAL ALLEGATIONS**

11 ***Defendants' Business***

12 19. J&J is an American multinational, pharmaceutical, and medical
 13 technologies corporation.⁴ It was founded in 1886 and is now one of the world's
 14 most valuable companies.⁵

15 20. In 2023, J&J split off its consumer healthcare business sector into a
 16 newly publicly traded company, Kenvue.⁶

17 21. Kenvue is an American consumer health company, formally known as
 18 the Consumer Healthcare division of Johnson & Johnson.⁷ It is the proprietor of
 19 several well-known brands, including Band Aid.⁸ It boasts 135+ years of experience
 20 across its brands and serves over 1.2 billion consumers around the world.⁹

21 22. J&J has manufactured, marketed, and sold the Products throughout the
 22 county, including in California, for over 100 years.

23 23. According to Band-Aid's website,

25 ⁴ https://en.wikipedia.org/wiki/Johnson_%26_Johnson.

26 ⁵ *Id.*

27 ⁶ *Id.*

28 ⁷ https://en.wikipedia.org/wiki/Kenvue#cite_note-ap_2021-11-12-2.

⁸ *Id.*

⁹ <https://www.kenvue.com/our-story>.

Our products have been used by millions—even billions—of people for more than a century, giving BAND-AID® Brand an iconic place in American culture. We reached that place through a history of innovation, healing, and caring for our customers.¹⁰

24. Indeed, American consumers have grown to know and trust Band-Aid based on marketing campaigns such as “[t]he catchy commercial jingle, ‘I am stuck on BAND-AID® Brand cuz BAND-AID’s stuck on me,’” and representations by Defendants in commercials and on packaging that the Products are the “#1 Doctor Recommended Brand.”

25. Defendants sell their products, including the Products that are the subject of this litigation, at mass market retailers, grocery stores, and drugstores throughout the United States, including California.

PFAS Chemicals and Associated Risks

26. PFAS are a category of highly persistent and potentially harmful man-made chemicals.¹¹

27. PFAS are not naturally occurring.¹² They were first developed by scientists in the 1940s.¹³

28. The man-made PFAS chemicals, which are in the Products, are sometimes called “forever chemicals” because they bioaccumulate, or build up in the body over time.

29. PFAS chemicals have been associated with a variety of negative health effects for humans and the environment.

30. The EPA has identified that “[c]urrent peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to:”¹⁴

- a. Reproductive effects such as decreased fertility or increased high blood pressure in pregnant women.

¹⁰ <https://www.band-aid.com/our-brand/brand-history>.

¹¹ *PFAS Explained*, EPA, <https://www.epa.gov/pfas/pfas-explained>.

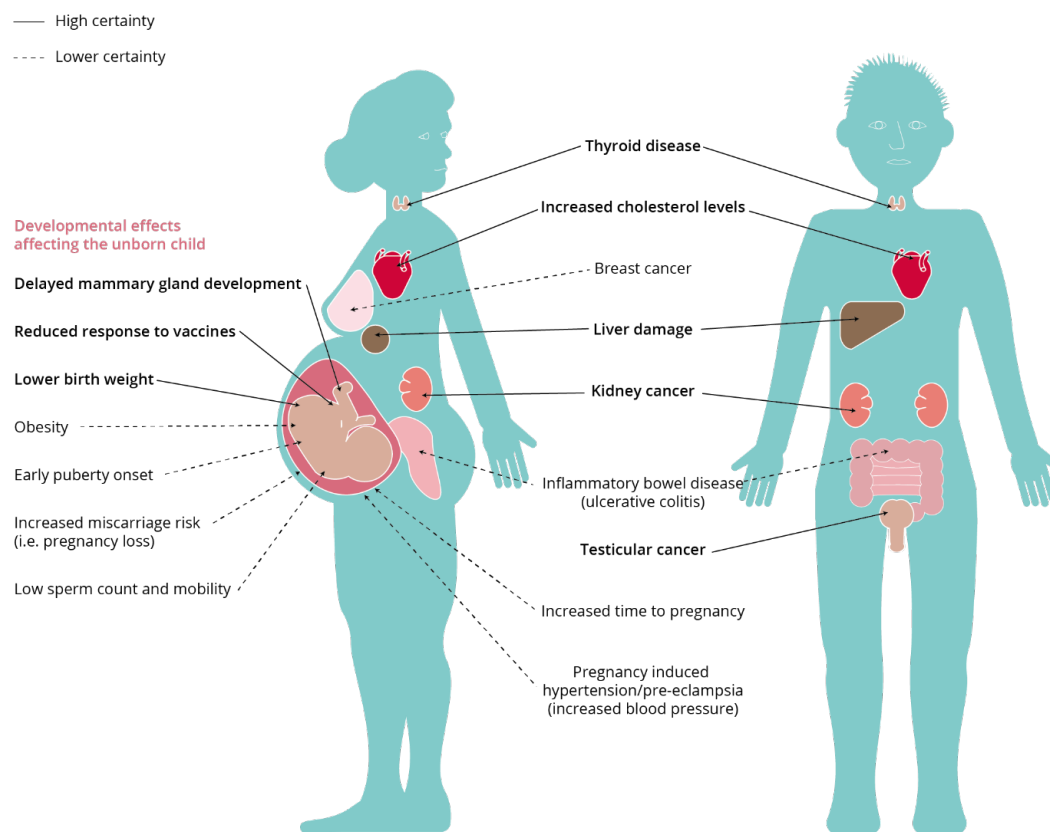
¹² <https://www.atsdr.cdc.gov/pfas/resources/pfas-faqs.html>.

¹³ https://www.3m.com/3M/en_US/pfas-stewardship-us/pfas-history/.

¹⁴ <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>.

- b. Developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes.
- c. Increased risk of some cancers, including prostate, kidney, and testicular cancers.
- d. Reduced ability of the body's immune system to fight infections, including reduced vaccine response.
- e. Interference with the body's natural hormones.
- f. Increased cholesterol levels and/or risk of obesity.

31. A figure from the European Environmental Agency ("EEA") shows the "[e]ffects of PFAS on human health."¹⁵



¹⁵ *Emerging chemical risks in Europe — 'PFAS'*, EUROPEAN ENVIRONMENT AGENCY (Dec. 12, 2019, last modified Mar. 9, 2021) <https://www.eea.europa.eu/publications/emerging-chemical-risks-in-europe>.

32. The EEA article further explained that “[p]eople most at risk of adverse health impacts are those exposed to high levels of PFAS, and vulnerable population groups such as children and the elderly.”¹⁶

33. The danger of PFAS chemicals is well known. On September 20, 2020, a *New York Times* article titled, “These Everyday Toxins May Be Hurting Pregnant Women and Their Babies”, reported on the dangers of PFAS—particularly during gestation and in early childhood development.¹⁷

34. As a result, the state of California has enacted laws that prohibit or require notification for the commercial distribution of products containing PFAS.

35. Scientists think these widely used industrial chemicals may harm pregnant women and their developing babies by meddling with gene regulators and hormones that control two of the body’s most critical functions: metabolism and immunity.¹⁸

36. According to the Environmental Protection Agency (“EPA”), limiting exposure to PFAS can help protect individual health. “Because certain PFAS are known to cause risks to human health, the most important steps you and your family can take to protect your health is to understand how to limit your exposure to PFAS by taking [steps to] reduce possible exposure during daily activities.”¹⁹

37. There is no treatment to remove PFAS from the body. Because PFAS accumulates in body tissues over time, the most obvious way to avoid exposure is for consumers to avoid products which they know contain PFAS.²⁰

¹⁶ *Id.*

¹⁷ Liza Gross, *These Everyday Toxins may be Hurting Pregnant Women and Their Babies*, NEW YORK TIMES (Sept. 23, 2020, updated Oct. 18, 2021) <https://www.nytimes.com/2020/09/23/parenting/pregnancy/pfas-toxins-chemicals.html>.

¹⁸ <https://www.nytimes.com/2020/09/23/parenting/pregnancy/pfas-toxins-chemicals.html>

¹⁹ <https://www.epa.gov/pfas/meaningful-and-achievable-steps-you-can-take-reduce-your-risk>.

²⁰ <https://www.healthline.com/health-news/how-to-reduce-your-exposure-to-pfas-the-hidden-toxic-forever-chemicals#How-to-limit-PFAS-exposure>.

38. Defendants are well aware of consumers' desire to avoid potentially harmful chemicals, which is exactly why they have engaged in an aggressive, uniform marketing campaign intended to convince consumers that the Products are safe by representing they provide trusted protection for healing wounds and are recommended by doctors across the country.

39. Reasonable consumers purchasing the Products would believe, based on Defendants' representations, that the Products are safe to use and do not contain chemicals that could adversely impact their health.

Discovery of PFAS in the Products

40. "Mamavation is a green parenting community, website, and blogger network" that provides guidance on non-toxic products, health research, organic food, and clean indoor air quality.²¹ It uses EPA-certified labs to identify chemicals, and then translates the science behind the findings using a scientific and medical advisory team.²² Mamavation's consumer studies are funded by affiliate proceeds and sales from the site.²³

41. On or about April 2, 2024, Mamavision published a "'Band-Aids' & Bandages with Indications of PFAS 'Forever Chemicals' Report" ("Band-Aid PFAS Report").²⁴

42. According to the Band-Aid PFAS Report, Mamavation sent 40 bandages from 18 brands, including the Products, to an EPA-certified laboratory looking for indications of PFAS.²⁵

²¹ [https://www.mamavation.com/about-network#:~:text=Mamavation%20is%20a%20green%20parenting,brand%20introductions%20and%20product%20recommendations; see also https://www.mamavation.com/](https://www.mamavation.com/about-network#:~:text=Mamavation%20is%20a%20green%20parenting,brand%20introductions%20and%20product%20recommendations;see%20alsohttps://www.mamavation.com/).

²² <https://www.mamavation.com/product-investigations#:~:text=We%20use%20several%20EPA%2DCertified,and%20from%20Environmental%20Health%20News.>

²³ *Id.*

²⁴ <https://www.mamavation.com/health/band-aids-bandages-pfas-forever-chemicals-report.html>.

²⁵ *Id.*

1 43. Mamavation’s EPA-certified laboratory used marker testing to identify
2 the potential presence of PFAS “forever chemicals” in bandages.²⁶

3 44. Organic fluorine is a marker for PFAS because all PFAS chemicals are
4 carbon-based compounds that contain fluorine. The specific lab method used to test
5 for total fluorine was the “Determination of Total Fluorine by Oxygen Flask
6 Combustion and Ion-Selective Electrode.” If total fluorine was observed at a
7 detection level of 10 ppm or greater, the lab did the “Determination of free Fluoride
8 Ion in the product by Ion-Selective Electrode” and then subtracted that from the
9 Total Fluorine to determine the amount of organic fluorine. This marker testing is
10 likely to show the presence of PFAS. Organic fluorine can also capture other
11 fluoropolymers, pharmaceuticals, and common hydrofluorocarbon refrigerants, such
12 as 1,1,1,2-tetrafluoroethane (commonly known as R-134a) and 2,3,3,3-
13 tetrafluoropropene (commonly known as HFO-1234yf), which are all also PFAS.²⁷

14 45. Scott Belcher, Ph.D. & Associate Professor with the Center for
15 Environmental & Health Effects of PFAS at North Carolina State University says
16 “fluoropolymers, such as polytetrafluoroethylene (PTFE), are extremely common
17 forms of PFAS that could be contributing to the organic fluorine found in bandages.
18 Methods used for detecting individual PFAS, such as PFOA or GenX, cannot
19 directly identify PTFE. However, the analysis of total organic fluorine (TOF) does
20 account for all PFAS contaminants in bandages, including PTFE. Therefore, this
21 method of testing serves as a good ‘spot-check’ of consumer products.”²⁸

22 46. The Band-Aid PFAS Report states that Mamavation’s laboratory
23 detected organic fluorine above 100 ppm in the absorbent pad or the adhesive flaps
24 of the Products. Specifically, it found:

25
26
27 ²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

- a. Band-Aid Flexible Fabric Comfortable Protection Bandages²⁹ — 188 ppm organic fluorine on the absorbent pad;
 - b. Band-Aid OURTONE Flexible Fabric BR45 Bandages — 262 ppm organic fluorine on the absorbent pad;
 - c. Band-Aid OURTONE Flexible Fabric BR55 Bandages — 250 ppm organic fluorine on the absorbent pad; and
 - d. Band-Aid OURTONE Flexible Fabric BR65 Bandages — 260 ppm organic fluorine on the absorbent pads and 374 ppm on the sticky flaps.
- A second product tested had 169 ppm on the absorbent pad.³⁰

47. Linda Birnbaum, Scientist Emeritus and Former Director of the National Institute of Environmental Health Sciences and National Toxicology Program & Scholar in Residence at Duke University, and Adjunct Professor at both University of North Carolina, & Yale University had this to say: “Because bandages are placed upon open wounds, it’s troubling to learn that they may be also exposing children and adults to PFAS. It’s obvious from the data that PFAS are not needed for wound care, so it’s important that the industry remove their presence to protect the public from PFAS and opt instead for PFAS-free materials.”³¹

48. In addition to the Band-Aid PFAS Report commissioned by Mamavation, Plaintiffs sought independent third-party testing to determine whether the Products contain PFAS chemicals.

49. Plaintiffs’ independent testing was conducted in accordance with accepted industry standards for detecting the presence of PFAS.

50. Plaintiffs’ testing detected material levels of PFAS in the Products, including significant levels of 3-(4-fluorophenyl)-3-methyl-3-propanoic acid (“FPePA”), Perfluorononanoic acid (“FHpPA”), Perfluoro-n-nonanoic acid

²⁹ Mamavation tested an older sample that was likely 7-8 years old and not available in stores anymore. *Id.*

³⁰ *Id.*

³¹ *Id.*

(“PFNA”), Perfluoro-n-undecanoic acid (“PFUdA”), and Perfluoro-n-decanoic acid (“PFDA”).

Defendants’ False and Deceptive Claims

51. The Products are bandages that are uniformly represented as the #1 doctor recommended brand.³²

52. Defendants also represent the Flexible Fabric Products “can help protect against dirt and germs that may cause infection” and provide “[t]rusted protection for healing your wounds.” The packaging also portrays a heart with a bandage (presumably, a Band-Aid brand Product) on it:



³² See, e.g., <https://www.band-aid.com/products/adhesive-bandages/ourtone-adhesive-bandages>.



53. The Products do not disclose the presence of PFAS—or any other synthetic chemical—in their ingredients.

54. It is undeniable that the Products are uniformly represented across all marketing channels, including the Product’s packaging.

Defendants’ Unlawful Conduct

55. At all times relevant to this action, Defendants knew, or at minimum should have known, that their Products contain PFAS.

56. To capitalize on increasing consumer demand for products free from toxic ingredients like PFAS, Defendants have knowingly and willfully deployed a concerted strategy to distinguish its Products from competing options on the market by representing the Products as the “#1 Doctor Recommended [bandage] Brand” that provides “[t]rusted protection for [consumers’] healing wounds.”

57. Throughout the class period, Defendants have targeted health-conscious consumers by falsely and misleadingly representing the Products as trusted and safe for consumers’ health and well-being. Consequently, reasonable

1 consumers believe the Products are free of chemicals known to harm human health.

2 58. Defendants are well-aware that consumers are increasingly demanding
3 products that support their health and well-being.

4 59. At the same time, awareness of, and an inclination toward, safer
5 products is guiding consumer choices. One survey, for instance, found that “when
6 asked to choose the top three factors they prioritize when deciding between products,
7 the majority of consumers surveyed said they prioritize the health/safety of products
8 (71%) and products free of certain toxic chemicals (70%).”³³

9 60. These findings extend to the packaging of products, with 82% of
10 consumers agreeing that “it is important for brands to balance safety and concern for
11 the environment when designing product packaging.”³⁴

12 61. Additionally, “[t]he majority of shoppers . . . are willing to spend more
13 for a product they know is safer, with 42% willing to spend 5-15% more, 36%
14 willing to spend 16-25% more, and 17% willing to spend 1-5% more.”³⁵

15 62. Therefore, current research demonstrates, and Defendants’ marketing
16 strategy supports, that the presence of harmful chemicals in products is material to
17 reasonable consumers.

18 63. Defendants’ strategy to stay aligned with consumer preferences in
19 order to retain a competitive advantage in the marketplace, which includes
20 representing to Products that do not contain harmful ingredients, would inevitably
21 be negatively impacted if it disclosed the presence of PFAS in their Products.

22 64. Defendants had exclusive knowledge of the contents and ingredients of
23 their Products, including whether they contained PFAS.

24 65. Defendants also had exclusive knowledge of their ingredient suppliers,

25 ³³ Made Safe, “What Shoppers Want: Safe & Healthy Products,”
26 <https://www.madesafe.org/wpcontent/uploads/2017/07/What-Shoppers-Want.pdf>.

27 ³⁴ Gray, “New Consumer Packaging Trends Are Changing the Game for Food &
Beverage Processors,” <https://www.gray.com/insights/new-consumer-packaging-trends-are-changing-the-game-for-food-beverage-processors/>.

28 ³⁵ Made Safe, “What Shoppers Want,” at 3.

1 from whom Defendants could have obtained information about the contents and
2 ingredients of the Production, including whether they contained PFAS.

3 66. Defendants also knew the presence of PFAS posed a concern with
4 regard to the safety of the Products.

5 67. Despite this knowledge, Defendants failed to disclose the presence of
6 PFAS in the Products. Such an omission was material to consumers.

7 68. Consumers lack the expertise to ascertain the true ingredients in the
8 Products prior to purchase. Accordingly, reasonable consumers must, and do rely
9 on Defendants to accurately and honestly advertise their Products' ingredients and
10 not contradict those representations by using chemicals in their Products that are
11 known to pose a risk to human health. Such misrepresentations are material to
12 reasonable consumers' purchasing decisions.

13 69. Defendants' representations that the Products provide "trusted
14 protection for [consumers'] healing wounds" and failure to disclose the presence of
15 PFAS in the Products' as described herein are false and misleading because the
16 Products actually contain toxic ingredients like PFAS.

17 70. Defendants' representations are likely to mislead reasonable
18 consumers, and indeed did mislead Plaintiffs and Class members, regarding the
19 presence of PFAS chemicals in their Products. Accordingly, these acts and practices
20 by Defendants are deceptive.

21 71. Consumers reasonably relied on Defendants' false statements and
22 misleading representations, and reasonably expected that Defendants' Products
23 would conform with their representations and, as such, would not contain harmful
24 PFAS chemicals.

25 72. Defendants' false statements, misleading representations and material
26 omissions are intentional, or otherwise entirely careless, and render their Products
27 worthless or less valuable.

1 73. If Defendants had disclosed to Plaintiffs and putative Class Members
2 that their Products contained PFAS chemicals, Plaintiffs and putative Class
3 Members would not have purchased Defendants' Products or they would have paid
4 less for them.

5 74. Plaintiffs and Class Members were among the intended recipients of
6 Defendants' deceptive representations and omissions described herein.

7 75. Defendants' representations and omissions, as described herein, are
8 material in that a reasonable person would attach importance to such information
9 and would be induced to act upon such information in making purchase decisions.

10 76. The materiality of the representations described herein also establishes
11 causation between Defendants' conduct and the injuries Plaintiffs and the Class
12 Members sustained.

13 77. Defendants are aware that consumers are concerned about the use of
14 PFAS in their products, yet it has continued to market and advertise their Products
15 as safe and trusted for consumers' health and well-being, focused representations in
16 order to profit off of unsuspecting consumers, including Plaintiffs and Class
17 Members.

18 78. The presence of PFAS chemicals in Defendants' Products are entirely
19 inconsistent with their uniform representations.

20 79. PFAS are present in Defendants' Products in a quantity which any
21 reasonable person would consider to be significant.

22 80. Defendants' knowingly false and misleading representations have the
23 intended result of convincing reasonable consumers that their Products are safe for
24 their intended use of protecting healing wounds and therefore do not contain toxic
25 ingredients like PFAS. No reasonable consumer would consider Defendants'
26 Products as doctor recommended (and, thus, safe) and "[t]rusted protection for
27 [consumers'] healing wounds" if they knew that the Products contained harmful
28

1 PFAS chemicals.

2 81. Defendants' false, misleading, and deceptive representations, as
3 described herein, are likely to continue to deceive and mislead reasonable
4 consumers and the general public. Indeed, they have already deceived and misled
5 Plaintiffs and Class Members.

6 82. In making the false, misleading, and deceptive representations,
7 Defendants knew and intended consumers would pay a premium for the Products
8 over comparable products that contain PFAS.

9 83. Plaintiffs and Class Members paid money and paid a premium for the
10 Products over comparable products that are made from or contain PFAS, expecting
11 the same or better quality than the comparable products. Due to Defendants'
12 misrepresentations, Plaintiffs did not obtain the full value of the Products.

13 84. Plaintiffs and Class Members purchased, purchased more of, or paid
14 more for, the Products than they would have had they known the truth about the
15 Products' harmful ingredients, i.e., that they contain PFAS. Thus, Plaintiffs and
16 Class Members have suffered injury in fact and lost money or property as a result
17 of Defendants' wrongful conduct.

18 85. Defendants' widespread marketing campaign portraying the Products
19 as safe and trusted as detailed herein, is misleading and deceptive to consumers
20 because the Products are made with toxic ingredients. Plaintiffs bring this action
21 on behalf of the proposed Classes to stop Defendants' misleading practices.

22 **PLAINTIFFS' FACTUAL ALLEGATIONS**

23 ***Plaintiff Saputo***

24 86. During the applicable statute of limitations period, including in or
25 around April of 2023, Plaintiff Saputo purchased the Band-Aid Flexible Fabric
26 Bandages from a Walmart located in Victorville, California. Plaintiff paid
27

1 approximately \$3 for the Product. Plaintiff Saputo purchased the Band-Aid Flexible
2 Fabric Bandage Product multiple times prior to April of 2023.

3 87. Prior to purchase, Plaintiff Saputo read the Products' packaging and
4 advertising, including the representations that they are the "#1 Doctor
5 Recommended Brand" and provide "[t]rust protection for your healing wounds."

6 88. Plaintiff Saputo believed he was purchasing Products that were safe for
7 use and free of harmful chemicals like PFAS, due not only to Defendants'
8 representations, but also Defendants' failure to mention the presence of PFAS on the
9 packaging. Plaintiff Saputo reasonably relied on these representations and warranties
10 in deciding to purchase the Products, and these representations were part of the basis
11 of the bargain in that he would not have purchased the Products, or would have paid
12 less for them, if the true facts had been known.

13 89. As a direct result of Defendants' material misrepresentations and
14 omissions, Plaintiff Saputo suffered and continues to suffer, economic injuries.

15 90. Plaintiff Saputo continues to desire to purchase the Products from
16 Defendants if he can rely on the Products to be safe and free from any toxic
17 ingredients, including those known to pose a risk to human health. However,
18 concerned about the health consequences of PFAS and Defendants'
19 misrepresentations detailed herein, Plaintiff Saputo is unable to determine if
20 Defendants' Products are actually free of harmful chemicals like PFAS in the future.
21 Plaintiff Saputo understands that the composition of the Products may change over
22 time, but as long as Defendants may freely advertise the Products as safe when they
23 actually contain material levels of PFAS, when presented with false or misleading
24 information when shopping, he will be unable to make informed decisions about
25 whether to purchase Defendants' Products and will be unable to evaluate the
26 different prices between Defendants' Products and competitor's products, which *are*
27 in fact free of PFAS.

1 91. Plaintiff Saputo also seeks to include an injunction to require the
2 implementation and funding of a blood serum testing program for Plaintiff Saputo
3 and Class Members to test for the presence of PFAS in their blood serum; and the
4 implementation and funding of a medical monitoring program for Plaintiff Saputo
5 and Class Members sufficient to monitor their health to ensure they are adequately
6 monitored for the harmful effects of PFAS in the human body.

7 ***Plaintiff Torres***

8 93. During the applicable statute of limitations period, including in or
9 around February of 2024, Plaintiff Torres purchased Band-Aid OURTONE Flexible
10 Fabric BR45 Bandages; Band-Aid OURTONE Flexible Fabric BR55 Bandages; and
11 Band-Aid OURTONE Flexible Fabric BR65 Bandages from CVS near her home in
12 Los Angeles, California. Plaintiff Torres paid approximately \$5 for each of the
13 Products at the time of her purchase.

14 94. Prior to purchase, Plaintiff Torres read the Products' packaging and
15 advertising, including the representations that they are the "#1 Doctor
16 Recommended Brand" and provide "[t]rust protection for your healing wounds."

17 95. Plaintiff Torres believed she was purchasing Products that were safe for
18 use and free of harmful chemicals like PFAS, due not only to Defendants'
19 representations, but also Defendants' failure to mention the presence of PFAS on the
20 packaging. Plaintiff Torres reasonably relied on these representations and warranties
21 in deciding to purchase the Products, and these representations were part of the basis
22 of the bargain in that she would not have purchased the Products, or would have paid
23 less for them, if the true facts had been known.

24 96. As a direct result of Defendants' material misrepresentations and
25 omissions, Plaintiff Torres suffered and continues to suffer, economic injuries.

26 97. Plaintiff Torres continues to desire to purchase the Products from
27 Defendants if she can rely on the Products to be safe and free from any toxic
28

1 ingredients, including those known to pose a risk to human health. However,
2 concerned about the health consequences of PFAS and Defendants’
3 misrepresentations detailed herein, Plaintiff Torres is unable to determine if
4 Defendants’ Products are actually free of harmful chemicals like PFAS in the future.
5 Plaintiff Torres understands that the composition of the Products may change over
6 time, but as long as Defendants may freely advertise the Products as safe when they
7 actually contain material levels of PFAS, when presented with false or misleading
8 information when shopping, she will be unable to make informed decisions about
9 whether to purchase Defendants’ Products and will be unable to evaluate the
10 different prices between Defendants’ Products and competitor’s products, which *are*
11 in fact free of PFAS.

12 98. Plaintiff Torres also seeks to include an injunction to require the
13 implementation and funding of a blood serum testing program for Plaintiff Torres
14 and Class Members to test for the presence of PFAS in their blood serum; and the
15 implementation and funding of a medical monitoring program for Plaintiff Torres
16 and Class Members sufficient to monitor their health to ensure they are adequately
17 monitored for the harmful effects of PFAS in the human body.

18 ***Plaintiff Goodwin***

19 101. During the applicable statute of limitations period, including in or
20 around January of 2024, Plaintiff Goodwin purchased the Band-Aid OURTONE
21 Flexible Fabric BR55 Bandages and Band-Aid OURTONE Flexible Fabric BR65
22 Bandages from Target near her home in Gardena, California. Plaintiff Goodwin paid
23 approximately \$5 for each of the Products at the time of her purchase.

24 102. Prior to purchase, Plaintiff Goodwin read the Products’ packaging and
25 advertising, including the representations that they are the “#1 Doctor
26 Recommended Brand” and provide “[t]rust protection for your healing wounds.”
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1 103. Plaintiff Goodwin believed she was purchasing Products that were safe
2 for use and free of harmful chemicals like PFAS, due not only to Defendants'
3 representations, but also Defendants' failure to mention the presence of PFAS on the
4 packaging. Plaintiff Goodwin reasonably relied on these representations and
5 warranties in deciding to purchase the Products, and these representations were part
6 of the basis of the bargain in that she would not have purchased the Products, or
7 would have paid less for them, if the true facts had been known.

8 104. As a direct result of Defendants' material misrepresentations and
9 omissions, Plaintiff Goodwin suffered and continues to suffer, economic injuries.

10 105. Plaintiff Goodwin continues to desire to purchase the Products from
11 Defendants if she can rely on the Products to be safe and free from any toxic
12 ingredients, including those known to pose a risk to human health. However,
13 concerned about the health consequences of PFAS and Defendants'
14 misrepresentations detailed herein, Plaintiff Goodwin is unable to determine if
15 Defendants' Products are actually free of harmful chemicals like PFAS in the future.
16 Plaintiff Goodwin understands that the composition of the Products may change over
17 time, but as long as Defendants may freely advertise the Products as safe when they
18 actually contain material levels of PFAS, when presented with false or misleading
19 information when shopping, she will be unable to make informed decisions about
20 whether to purchase Defendants' Products and will be unable to evaluate the
21 different prices between Defendants' Products and competitor's products, which *are*
22 in fact free of PFAS.

23 106. Plaintiff Goodwin also seeks to include an injunction to require the
24 implementation and funding of a blood serum testing program for Plaintiff Goodwin
25 and Class Members to test for the presence of PFAS in their blood serum; and the
26 implementation and funding of a medical monitoring program for Plaintiff Goodwin
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1 and Class Members sufficient to monitor their health to ensure they are adequately
2 monitored for the harmful effects of PFAS in the human body.

3 **INJURY TO THE PUBLIC AT-LARGE AND POTENTIAL**
4 **FOR FUTURE HARM**

5 107. Defendants' wrongful conduct harms the public-at-large.

6 108. PFAS chemicals, also known as "forever chemicals," are a category of
7 highly persistent and toxic man-made chemicals that have been associated with
8 numerous negative health effects for humans.

9 109. PFAS chemicals are known to negatively impact the human body,
10 including, but not limited to, decreased fertility, developmental effects or delays in
11 children, increased risk of cancers, liver damage, increased risk of asthma and
12 thyroid disease, adverse impacts on the immune system, interference with hormones,
13 and increased cholesterol levels.

14 110. Because Defendants' deceptive advertising is ongoing and directed to
15 the public, and because Defendants continue to sell their Products containing PFAS
16 chemicals, the deception poses an ongoing risk to the public.

17 111. As such, a public injunction must be provided in order to enjoin
18 Defendants' continued harm of consumers and the public-at-large.

19 **TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS**

20 112. Defendants had actual knowledge that their Products contained PFAS
21 chemicals that pose a risk of harm to human health.

22 113. Although Defendants were aware of the deception in their advertising,
23 marketing, packaging, and sale of the Products given the inclusion of PFAS
24 chemicals, they took no steps to disclose to Plaintiffs or Class Members that their
25 Products contained PFAS chemicals.
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1 114. Despite their knowledge, Defendants have negligently misrepresented
2 the Products as having qualities and characteristics they do not, while concealing the
3 fact that their Products contain PFAS chemicals.

4 115. Defendants made, and continue to make, affirmative false statements
5 and misrepresentations to consumers, and continue to omit the fact that the Products
6 contain PFAS, to promote sales of their Products.

7 116. Defendants misrepresented, concealed, and otherwise omitted material
8 facts that would have been important to Plaintiffs and Class Members in deciding
9 whether to purchase the Products. Defendants' misrepresentations and omissions
10 were knowing, and they intended to, and did, deceive reasonable consumers,
11 including Plaintiffs and Class Members. Accordingly, Plaintiffs and Class Members
12 reasonably relied upon Defendants' misrepresentations and concealment of these
13 material facts and suffered injury as a proximate result of that justifiable reliance.

14 117. The PFAS chemicals in the design and/or manufacture of Defendants'
15 Products were not reasonably detectible to Plaintiffs and Class Members.

16 118. At all times, Defendants actively and intentionally misrepresented the
17 qualities and characteristics of the Products, while concealing the existence of the
18 PFAS chemicals and failing to inform Plaintiffs or Class Members of the existence
19 of the PFAS chemicals in their Products. Accordingly, Plaintiffs' and Class
20 Members' lack of awareness was not attributable to a lack of diligence on their part.

21 119. Defendants' statements, words, and acts were made for the purpose of
22 deceiving the public and suppressing the truth that the Products contained PFAS
23 chemicals.

24 120. Defendants misrepresented the Products and concealed the PFAS
25 chemicals for the purpose of delaying Plaintiffs and Class Members from filing a
26 complaint on their causes of action.

1 121. As a result of Defendants’ intentional misrepresentations and active
2 concealment of the PFAS chemicals and/or failure to inform Plaintiffs and Class
3 Members of the PFAS chemicals, any and all applicable statutes of limitations
4 otherwise applicable to the allegations herein have been tolled. Furthermore,
5 Defendants are estopped from relying on any statutes of limitations in light of their
6 intentional misrepresentations and active concealment of the inclusion of PFAS
7 chemicals in the Products.

8 122. Further, the causes of action alleged herein did not occur until Plaintiffs
9 and Class Members discovered that the Products contained PFAS chemicals.
10 Plaintiffs and Class Members had no realistic ability to discern that the Products
11 contained PFAS chemicals until they learned of the existence of the PFAS
12 chemicals. In either event, Plaintiffs and Class Members were hampered in their
13 ability to discover their causes of action because of Defendants’ active concealment
14 of the existence and true nature of the Products.

15 **FEDERAL RULE OF CIVIL PROCEDURE 9(B) ALLEGATIONS**

16 123. Although Defendants are in the best position to know what content they
17 placed on their packaging, website(s), and other marketing and advertising during
18 the relevant timeframe, and the knowledge they had regarding the PFAS chemicals
19 and their failure to disclose the existence of PFAS chemicals in the Products to
20 Plaintiffs and consumers, to the extent necessary, Plaintiffs satisfy the requirements
21 of Rule 9(b) by alleging the following facts with particularity:

22 124. **WHO:** Defendants made their “[t]rust protection for your healing
23 wounds” and other representations on the Products’ packaging, online, and their
24 marketing and advertising of the Products.

25 125. **WHAT:** Defendants’ conduct here was, and continues to be, deceptive
26 and negligent because of their “#1 Doctor Recommended Brand,” “[t]rust
27 protection for healing your wounds” and heart/bandage logo representations and
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1 failure to disclose the Products contain PFAS, which, together, imply the products
2 are safe for their intended use and do not contain harmful, toxic ingredients. Thus,
3 Defendants' conduct deceived Plaintiffs and Class Members into believing that the
4 Products were manufactured and sold with the represented qualities. Defendants
5 knew or should have known this information is material to reasonable consumers,
6 including Plaintiffs and Class Members, in making their purchasing decisions, yet it
7 continued to pervasively market the Products as possessing qualities they do not
8 have.

9 126. **WHEN:** Defendants made material misrepresentations, false
10 statements, and/or material omissions during the putative Class periods and at the
11 time Plaintiffs and Class Members purchased the Products, prior to and at the time
12 Plaintiffs and Class Members made claims after realizing the Products contained
13 harmful chemicals, and continuously throughout the applicable Class periods.

14 127. **WHERE:** Defendants' marketing message was uniform and pervasive,
15 carried through false statements, misrepresentations, and/or omissions on the
16 Products' packaging, as well as on website(s) and social media channels used to
17 market and advertise the Products.

18 128. **HOW:** Defendants made false statements, misrepresentations and/or
19 material omissions regarding the presence of PFAS chemicals in the Products.

20 129. **WHY:** Defendants made the false statements, misrepresentations
21 and/or material omissions detailed herein for the express purpose of inducing
22 Plaintiff, Class Members, and all reasonable consumers to purchase and/or pay for
23 the Products over other brands that did not make similar representations, the effect
24 of which was that Defendants profited by selling the Products to many thousands of
25 consumers.
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1 130. **INJURY:** Plaintiffs and Class Members purchased, paid a premium, or
2 otherwise paid more for the Products when they otherwise would not have, absent
3 Defendants' misrepresentations and false and misleading statements.

4 **CLASS ACTION ALLEGATIONS**

5 131. Plaintiffs bring this action individually and as the representative of all
6 those similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure,
7 on behalf of the below-defined Classes:

8 **National Class:** During the fullest period allowed by law, all
9 persons who purchased the Products within the United States for
10 personal use and not for resale.

11 **California Subclass:** During the fullest period allowed by law, all
12 persons who purchased the Products within the state of California
13 for personal use and not for resale.

14 132. Members of the classes described are referred to herein as "Class
15 Members" or members of the "Class."

16 133. Plaintiffs reserve the right to amend the Class definitions or add a Class
17 or Classes if discovery and/or further investigation reveal that the Class definition(s)
18 should be narrowed, expanded or otherwise modified.

19 134. The following are excluded from the Class: (1) any Judge presiding
20 over this action and members of his or her family; (2) Defendants, Defendants'
21 subsidiaries, parents, successors, predecessors, and any entity in which Defendants
22 or their parents have a controlling interest (as well as current or former employees,
23 officers, and directors); (3) persons who properly execute and file a timely request
24 for exclusion from the Class; (4) persons whose claims in this matter have been
25 finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and
26 Defendants' counsel; and (6) the legal representatives, successors, and assigns of
27 any such excluded persons.

1 **135. Numerosity – Federal Rule of Civil Procedure 23(a)(a):** While
 2 Plaintiffs do not know at this time the exact number of proposed Class Members,
 3 given the nature of the claims and the volume of sales of the Products nationally, the
 4 members of the Class are so numerous that their individual joinder herein is
 5 impracticable. Plaintiffs are informed and believe there are hundreds of thousands
 6 of members in the proposed Class, if not more, and a precise number can be
 7 ascertained through discovery. The number of individuals who comprise the Class
 8 are so numerous that the disposition of all such person's claims in a class action,
 9 rather than in individual actions, will benefit both the parties and the courts.

10 **136. Commonality and Predominance – Federal Rule of Civil Procedure**
 11 **23(a)(2) and 23(b)(3):** Common questions of law and fact exist as to all members
 12 of each of the Class and predominate over questions affecting only individual
 13 members of the Class. Such common questions of law or fact include, but are not
 14 limited to, the following:

- 15 a. Whether Defendants misrepresented, omitted, and/or
 16 failed to disclose material facts concerning the Products;
- 17 b. Whether Defendants' conduct was unlawful; unfair;
 18 negligent and/or deceptive;
- 19 c. Whether Defendants breached express warranties to
 20 Plaintiffs and Class Members;
- 21 d. Whether Defendants were unjustly enriched as a result of
 22 the unlawful conduct alleged herein such that it would be
 23 inequitable for Defendants to retain the benefits conferred
 24 upon it by Plaintiffs and the proposed Class;
- 25 e. Whether Plaintiffs and the Class have sustained damages
 26 with respect to the claims asserted, and if so, the proper
 27 measure of their damages.

1 137. Defendants engaged in a common course of conduct giving rise to the
2 legal rights Plaintiffs seek to enforce on behalf of themselves and the other Members
3 of the proposed Class. Similar or identical statutory and common law violations,
4 business practices, and injuries are involved. Individual questions, if any, pale in
5 comparison, in both quality and quantity, to the numerous common questions that
6 dominate this action.

7 138. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’
8 claims are typical of the claims of the other Members of the Class because, among
9 other things, all Members of the Class were comparably injured through Defendants’
10 uniform misconduct described herein. Further, there are no defenses available to
11 Defendants that are unique to Plaintiffs or to any particular Members of the Class.

12 139. **Adequacy of Representation – Federal Rule of Civil Procedure**
13 **23(a)(4).** Plaintiffs are adequate Class representatives because their interests do not
14 conflict with the interests of the other Members of the Class they seek to represent;
15 they have retained counsel competent and experienced in complex class action
16 litigation; and they will prosecute this action vigorously. The interests of the Class
17 will be fairly and adequately protected by Plaintiffs and the undersigned counsel.

18 140. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure**
19 **23(b)(1).** Absent a representative class action, Members of the Class would continue
20 to suffer the harm described herein, for which they would have no remedy. Even if
21 separate actions could be brought by individual consumers, the resulting multiplicity
22 of lawsuits would cause undue burden and expense for both the Court and the
23 litigants, as well as create a risk of inconsistent rulings and adjudications that might
24 be dispositive of the interests of similarly situated purchasers, substantially impeding
25 their ability to protect their interests, while establishing incompatible standards of
26 conduct for Defendant. The proposed Classes thus satisfy the requirements of Fed.
27 R. Civ. P. 23(b)(1).

141. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Members of the Class are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Members of the Class to individually seek redress for Defendants’ wrongful conduct. Even if Members of the Class could afford individual litigation, the court system could not. Individualized litigation would create a potential for inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

CAUSES OF ACTION

COUNT I

Violations of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et seq. (On Behalf of Plaintiffs and the California Class)

142. Plaintiffs bring this count on behalf of themselves and the California Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

143. Defendants are “persons” as defined by Cal. Bus. & Prof. Code § 17201.

144. Plaintiffs and California Class Members who purchased Defendants’ Product suffered an injury by virtue of buying products in which Defendants omitted the Product’s true quality, reliability, safety, and use. Had Plaintiffs and California Class Members known that Defendants omitted material information regarding the Product, they would not have purchased the Product.

145. Defendants' conduct, as alleged herein, violates the laws and public policies of California and the federal government, as set out in this Complaint.

146. There is no benefit to consumers or competition by allowing Defendants to deceptively label, market, and advertise its Product.

147. Plaintiffs and California Class Members who purchased Defendants' Product had no way of reasonably knowing that the Product was deceptively packaged, marketed, advertised, and labeled, was not safe for human consumption, and was unsuitable for its intended use as a protective bandage for healing wounds. Thus, Plaintiffs and California Class Members could not have reasonably avoided the harm they suffered.

148. Specifically, Defendants marketed, labeled, and represented the Product with the representations described herein, when in fact the Product contains PFAS, which no reasonable consumer would believe was in Product, which was represented as trusted, safe, and recommended by doctors.

149. The gravity of the harm suffered by Plaintiffs and California Class Members who purchased Defendants' Product outweighs any legitimate justification, motive, or reason for packaging, marketing, advertising, and labeling the Product in a deceptive and misleading manner. Accordingly, Defendants' actions are immoral, unethical, unscrupulous and offend the established public policies as set out in federal regulations and are substantially injurious to Plaintiffs and California Class Members.

150. The above acts of Defendants in disseminating said misleading and deceptive statements to consumers throughout the state of California, including to Plaintiffs and California Class Members, were and are likely to deceive reasonable consumers by obfuscating the true nature of Defendants' Product and, thus, were violations of Cal. Bus. & Prof. Code §§ 17500, et seq.

1 151. Defendants have violated the UCL's proscription against engaging in
2 unlawful business practices as a result of its violations of the CLRA, Cal. Civ. Code
3 § 1770(a)(5), (a)(7), and (a)(9) as alleged below, violations of California's Song-
4 Beverly Act and violations of California's False Advertising Law, in addition to
5 breaches of warranty and violations of common law.

6 152. Defendants have also violated the UCL's proscription against engaging
7 in unfair business practices. Defendants' acts, omissions, and non-disclosures as
8 alleged herein also constitute "unfair" business acts and practices within the meaning
9 of Business & Professions Code § 17200 et seq. in that their conduct is substantially
10 injurious to consumers, offends public policy, and is immoral, unethical, oppressive,
11 and unscrupulous, as the gravity of the conduct outweighs any alleged benefits
12 attributable to such conduct.

13 153. Defendants have further violated the UCL's proscription against
14 engaging in fraudulent business practices. Defendants' claims, nondisclosures, and
15 misleading statements with respect to the Product, as more fully set forth above,
16 were false, misleading and/or likely to deceive the consuming public within the
17 meaning of Business & Professions Code § 17200.

18 154. Plaintiffs and the other California Class Members suffered a substantial
19 injury by virtue of buying the Product that they would not have purchased absent
20 Defendants' unlawful, fraudulent, and unfair marketing, advertising, packaging, and
21 omission about the defective nature of the Product.

22 155. As a result of Defendants' above unlawful, unfair, and fraudulent acts
23 and practices, Plaintiffs, on behalf of themselves and all others similarly situated,
24 and as appropriate, on behalf of the general public, seek injunctive relief prohibiting
25 Defendants from continuing these wrongful practices.

26 156. Additionally, Plaintiffs seek restitution if monetary damages are not
27 available. Indeed, restitution under the UCL can be awarded in situations where the
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entitlement to damages may prove difficult. But even if damages were available, such relief would not be adequate to address the injury suffered by Plaintiffs and other California Class Members. Unlike damages, the Court's discretion in fashioning equitable relief is very broad. Thus, restitution would allow recovery even when normal consideration associated with damages would not.

COUNT II
Violation of the California False Advertising Law ("FAL"),
California Business and Professions Code §§ 17500, et seq.
(On Behalf of Plaintiffs and the California Class)

157. Plaintiffs bring this count on behalf of themselves and the California Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

158. The conduct described herein took place within the state of California and constitutes deceptive or false advertising in violation of California Business and Professions Code § 17500.

159. The FAL provides that "[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services" to disseminate any statement "which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500.

160. Defendants violated the FAL by failing to disclose the Product contained harmful PFAS, which is a material fact to reasonable consumers.

161. At the time of its misrepresentations, Defendants were either aware the Product contained PFAS, which no reasonable consumer would expect would be in the Product, given it is not included anywhere in the Product's label, or was aware that it lacked the information and/or knowledge required to make such a representation truthfully. Defendants concealed, omitted, and failed to disclose this information to Plaintiffs and California Class Members.

1 162. Defendants' descriptions of the Product were false, misleading, a
2 material omission, and likely to deceive Plaintiffs and other reasonable consumers.

3 163. Defendants' conduct therefore constitutes deceptive or misleading
4 advertising.

5 164. Plaintiffs have standing to pursue claims under the FAL, as they
6 reviewed and relied on Defendants' packaging, advertising, representations, and
7 marketing materials regarding the Product when selecting and purchasing the
8 Product.

9 165. In reliance on the statements made in Defendants' advertising and
10 marketing materials and Defendants' omissions and concealment of material facts
11 regarding the quality and use of the Product, Plaintiffs and California Class Members
12 purchased the Product.

13 166. Had Defendants disclosed the true nature of the Product (that it contains
14 or risks containing PFAS), Plaintiffs and California Class Members would not have
15 purchased the Product or would have paid substantially less for it.

16 167. As a direct and proximate result of Defendants' actions, as set forth
17 herein, Defendants have received ill-gotten gains and/or profits, including but not
18 limited to money from Plaintiffs and California Class Members who paid for the
19 Product, which contained harmful chemicals and was therefore safe.

20 168. As a result of Defendants' above unlawful, unfair, and fraudulent acts
21 and practices, Plaintiffs, on behalf of themselves and all others similarly situated,
22 and as appropriate, on behalf of the general public, seek injunctive relief prohibiting
23 Defendants from continuing these wrongful practices.

24 169. Additionally, Plaintiffs seek restitution if monetary damages are not
25 available. Indeed, restitution under the FAL can be awarded in situations where the
26 entitlement to damages may prove difficult. But even if damages were available,
27 such relief would not be adequate to address the injury suffered by Plaintiffs and
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1 other Class Members. Unlike damages, the Court’s discretion in fashioning equitable
 2 relief is very broad. Thus, restitution would allow recovery even when normal
 3 consideration associated with damages would not.

4 **COUNT III**

5 **Breach of Implied Warranty Under the Song-Beverly Act, 6 Cal. Civ. Code § 1790, et seq. and California Commercial Code § 2314 (On Behalf of Plaintiffs and the California Class)**

7 170. Plaintiffs bring this count on behalf of themselves and the California
 8 Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

9 171. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §
 10 1790. et seq., and California Commercial Code § 2314, every sale of consumer
 11 goods in the state of California is accompanied by both a manufacturer’s and retail
 12 seller’s implied warranty that the goods are merchantable, as defined in that Act. In
 13 addition, every sale of consumer goods in California is accompanied by both a
 14 manufacturer’s and retail seller’s implied warranty of fitness when the manufacturer
 15 or retailer has reason to know that the goods as represented have a particular purpose
 16 and that the buyer is relying on the manufacturer’s or retailer’s skill or judgment to
 17 furnish suitable goods consistent with that represented purpose.

18 172. The Product at issue here is a “consumer good[.]” within the meaning
 19 of Cal. Civ. Code § 1791(a).

20 173. Plaintiffs and California Class Members who purchased the Product are
 21 “retail buyers” within the meaning of Cal. Civ. Code § 1791.

22 174. Defendants are in the business of manufacturing and/or producing the
 23 Product and therefore is a “manufacturer” and “seller” within the meaning of Cal.
 24 Civ. Code § 1791.

25 175. Defendants impliedly warranted to retail buyers that the Product was
 26 merchantable in that it would: (a) pass without objection in the trade or industry
 27 under the contract description, and (b) was fit for the ordinary purposes for which
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the Product is used. For a consumer good to be “merchantable” under the Song-Beverly Act, it must satisfy both of these elements. Defendants breached these implied warranties because the Product was unsafe for consumption due to its inclusion of PFAS. Therefore, the Product would not pass without objection in the trade or industry and were not fit for the ordinary purpose for which they are used.

176. Plaintiffs and California Class Members purchased the Product in reliance upon Defendants’ skill and judgment in properly packaging and labeling the Product.

177. The Product was not altered by Plaintiffs or California Class Members.

178. The Product was defective at the time of sale. The issue as described in this Complaint was latent in the Product and not discoverable at the time of sale.

179. Defendants knew the Product would be purchased and used without additional testing by Plaintiffs and California Class Members.

180. As a direct and proximate cause of Defendants’ breach of the implied warranty, Plaintiffs and California Class Members have been injured and harmed because they would not have purchased the Product if they knew the truth about the Product, namely, that it was unfit for use and posed a significant safety risk.

181. Plaintiffs have not sent a notice letter to Defendants regarding their Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790. et seq. Plaintiff will do so and amend this Complaint to seek all relief available to Plaintiffs under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790. et seq.

182. Plaintiffs and the California Class seek compensatory damages, attorney’s fees, costs, and any other just and proper relief available under law.

COUNT IV
Breach of Express Warranty
(On Behalf of Plaintiffs and the National Class)

183. Plaintiffs bring this count on behalf of themselves and the National Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

1 184. Plaintiffs and Class Members formed a contract with Defendants at the
2 time Plaintiffs and Class Members purchased the Products.

3 185. The terms of the contract include the promises and affirmations of fact
4 made by Defendants on the Products packaging and through marketing and
5 advertising, as described above.

6 186. This labeling, marketing, and advertising constitute express warranties
7 and became part of the basis of the bargain and are part of the standardized contract
8 between Plaintiffs and Class Members.

9 187. As set forth above, Defendants purport through their advertising,
10 labeling, marketing, and packaging, to create an express warranty that the Products
11 are safe for use and provided “[t]rusted protection for [consumers’] healing
12 wounds.”

13 188. The above affirmations of fact were not couched as “belief” or
14 “opinion,” and were not “generalized statements of quality not capable of proof or
15 disproof.”

16 189. These affirmations of fact became part of the basis for the bargain and
17 were material to Plaintiffs’ and Class Members’ decision to purchase the Products.

18 190. Plaintiffs and Class Members reasonably relied upon Defendants’
19 affirmations of fact and justifiably acted in ignorance of the material facts omitted
20 or concealed when they decided to buy Defendants’ Products.

21 191. Plaintiffs and Class Members performed all conditions precedent to
22 Defendants’ liability under this contract when they purchased the Products.

23 192. Defendants thereby breached the following state warranty laws:

- 24 a. Code of Ala. § 7-2-313;
- 25 b. Alaska Stat. § 45.02.313;
- 26 c. A.R.S. § 47-2313;
- 27 d. A.C.A. § 4-2-313;

- e. Cal. Comm. Code § 2313;
- f. Colo. Rev. Stat. § 4-2-313;
- g. Conn. Gen. Stat. § 42a-2-313;
- h. 6 Del. C. § 2-313;
- i. D.C. Code § 28:2-313;
- j. Fla. Stat. § 672.313;
- k. O.C.G.A. § 11-2-313;
- l. H.R.S. § 490:2-313;
- m. Idaho Code § 28-2-313;
- n. 810 I.L.C.S. 5/2-313;
- o. Ind. Code § 26-1-2-313;
- p. Iowa Code § 554.2313;
- q. K.S.A. § 84-2-313;
- r. K.R.S. § 355.2-313;
- s. 11 M.R.S. § 2-313;
- t. Md. Commercial Law Code Ann. § 2-313;
- u. 106 Mass. Gen. Laws Ann. § 2-313;
- v. M.C.L.S. § 440.2313;
- w. Minn. Stat. § 336.2-313;
- x. Miss. Code Ann. § 75-2-313;
- y. R.S. Mo. § 400.2-313;
- z. Mont. Code Anno. § 30-2-313;
- aa. Neb. Rev. Stat. § 2-313;
- bb. Nev. Rev. Stat. Ann. § 104.2313;
- cc. R.S.A. 382-A:2-313;
- dd. N.J. Stat. Ann. § 12A:2-313;
- ee. N.M. Stat. Ann. § 55-2-313;

1 ff. N.Y. U.C.C. Law § 2-313;
2 gg. N.C. Gen. Stat. § 25-2-313;
3 hh. N.D. Cent. Code § 41-02-30;
4 ii. II. O.R.C. Ann. § 1302.26;
5 jj. 12A Okl. St. § 2-313;
6 kk. Or. Rev. Stat. § 72-3130;
7 ll. 13 Pa. Rev. Stat. § 72-3130;
8 mm. R.I. Gen. Laws § 6A-2-313;
9 nn. S.C. Code Ann. § 36-2-313;
10 oo. S.D. Codified Laws, § 57A-2-313;
11 pp. Tenn. Code Ann. § 47-2-313;
12 qq. Tex. Bus. & Com. Code § 2.313;
13 rr. Utah Code Ann. § 70A-2-313;
14 ss. 9A V.S.A. § 2-313;
15 tt. Va. Code Ann. § 59.1-504.2;
16 uu. Wash. Rev. Code Ann. § 6A.2-313;
17 vv. W. Va. Code § 46-2-313;
18 ww. Wis. Stat. § 402.313; and
19 xx. Wyo. Stat. § 34.1-2-313.

20 193. Within a reasonable time after they knew or should have known,
21 Defendants did not change the Products' label to stop the deceptive acts and practices
22 by falsely warranting that their Products were safe for use and provided "[t]rusted
23 protection for [consumers'] healing wounds," and by falsely omitting that their
24 Products contained material levels of PFAS.

COUNT V
Negligent Misrepresentation
(On Behalf of Plaintiffs and the National Class)

194. Plaintiffs bring this count on behalf of themselves and the National Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

195. As alleged above, Defendants misrepresented the safety of their Products and omitted that the Products contained PFAS. These misrepresentations and omissions constituted a material fact (i.e., a consumer's decision to purchase the Products would be influenced by its safety and the presence of PFAS).

196. Defendants' misrepresentations and omissions were made in the course of business transactions (the marketing, advertisement, sale, and purchase of the Products) in which both Plaintiffs and Defendants have a pecuniary interest.

197. Defendants knew (or should have known) that these representations and omissions were false and/or misleading and failed to exercise reasonable care in dissemination of the information contained on its labels and in its marketing and advertising.

198. Defendants possess superior knowledge regarding the risks involved in the production and manufacturing of their Products. Such knowledge is not readily available to consumers like Plaintiffs and Class Members.

199. Defendants have a duty to provide consumers, like Plaintiffs and Class Members, with products that are safe for their intended use.

200. Consumers lack the meaningful ability to test or independently ascertain or verify whether a product contains unsafe substances, such as PFAS, especially at the point of sale, and therefore must and do rely on Defendants to truthfully and honestly report what the Products contain on the Products' packaging and/or labeling.

201. Defendants intended that their representations and omissions would induce consumers like Plaintiffs and Class Members into purchasing the Products.

203. Plaintiffs' injuries were proximately caused by Defendants' misrepresentations and omissions. Plaintiffs viewed Defendants' labels prior to purchasing the Products, and the representations that the Products were safe prompted them to purchase the Products. Had Plaintiffs been aware of Defendants' misrepresentations and omissions, they would have been unwilling to purchase the Products, or to purchase them at the price that they paid.

204. Plaintiffs bring this count on behalf of themselves and the National Class and repeat and re-allege paragraphs 1 through 141 as if fully included herein.

206. At all relevant times, Defendants knew or had reason to know of the risk of injury and the resultant harm that the Products posed to Plaintiffs and Class Members, as the existence of PFAS in the Products existed at the time of their design, construction, manufacture, inspection, distribution, labeling, marketing, advertising, and/or sale, as described herein.

1 208. At minimum, the duty arose for Defendants to warn consumers that use
2 of the Products could result in injury and was unreasonably dangerous.

3 209. Defendants have been unjustly enriched in retaining the revenues
4 derived from the purchases of the Products by Plaintiffs and the other members of
5 the Class. Retention of those monies under these circumstances is unjust and
6 inequitable because Defendants' representations regarding the quality or value of the
7 Products were misleading to consumers, which caused injuries to Plaintiffs and the
8 other members of the Class, because they would have not purchased the Products
9 had they known the truth or would only have purchased the Products for a lower
10 price.

11 210. Because Defendants' retention of the non-gratuitous benefits conferred
12 on it by Plaintiffs and the other members of the Class is unjust and inequitable,
13 Defendants must pay restitution to Plaintiffs and the other members of the Class for
14 their unjust enrichment, as ordered by the Court.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, individually and on behalf of all other similarly
17 situated members of the Class, pray for relief and judgment, including entry of an
18 order, as follows:

- 19 (a) Declaring that this action is properly maintained as a class action,
20 certifying the proposed Class, appointing Plaintiffs as Class
21 Representative, and appointing Plaintiffs' counsel as Class Counsel;
22 (b) Directing that Defendants bear the costs of any notice sent to the Class;
23 (c) Ordering Defendants to pay restitution to Plaintiffs and the Class;
24 (d) An Order requiring Defendants to establish a blood testing program for
25 Plaintiffs and the Class, as well as to establish a medical monitoring
26 protocol for Plaintiffs and the Class to monitor individuals' health and
27 diagnose at an early stage any ailments associated with exposure to
28

PFAS;

(e) A jury trial and damages according to proof;

(f) Awarding actual damages to Plaintiffs and the Class;

(g) Awarding Plaintiffs and Members of the Class statutory damages, as provided by the applicable state consumer protection statutes invoked above;

(h) Awarding attorneys' fees and litigation costs to Plaintiffs and Members of the Class;

(i) Civil penalties, prejudgment interest and punitive damages as permitted by law; and

(j) Ordering such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial of the claims asserted in this Class Action Complaint.

Dated: June 27, 2024.

Respectfully submitted,

/s/ Kristen Lake Cardoso
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23 **Pro Hac Vice* application forthcoming